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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability  
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;  
MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond  
Swope, Dept. 23**

**DEFENDANT FACEBOOK, INC.'S  
AMENDED NOTICE OF MOTION AND  
MOTION TO SEAL; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF**

Date: July 19, 2019  
Time: 2:00 p.m.  
Dept: 23 (Complex Civil Litigation)  
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015  
TRIAL DATE: April 25, 2019

1 **NOTICE OF MOTION AND MOTION**

2 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on July 19, 2019 at 2:00 p.m., in Department 23 of the Superior  
4 Court of California, San Mateo County, 400 County Center, Redwood City, California, Defendant  
5 Facebook, Inc. ("Facebook") will and hereby does move, pursuant to the stipulated protective order that  
6 is in place in this litigation, and the California Rules of Court for an order sealing confidential  
7 information contained in the following documents, filed and lodged under seal on April 11, 2019:

- 8 • the redacted portions of Defendant Facebook, Inc.'s *Ex Parte* Application for an Order  
9 Shortening Time for Depositions; and  
10 • the entirety of Exhibits 1 and 2 to the Declaration of Zachary G.F. Abrahamson in Support  
11 of Defendant Facebook, Inc.'s *Ex Parte* Application for an Order Shortening Time for  
12 Depositions.

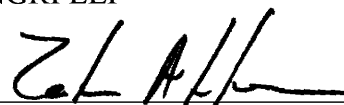
13 Facebook would suffer harm to its business if the redacted portions of these documents were  
14 unsealed, as discussed in the accompanying Memorandum of Points and Authorities. In addition,  
15 unsealing would prejudice the privacy interests of third parties.

16 This Motion is based on this Notice of Motion and the Memorandum of Points and Authorities,  
17 the Declaration of Zachary G.F. Abrahamson in Support of Defendant Facebook, Inc.'s Motion to Seal  
18 submitted herewith, and all other pleadings, records, and papers filed in this action, and on any other  
19 evidence and argument as may be considered by the Court prior to its decision on the Motion.

20 Dated: April 17, 2019

DURIE TANGRI LLP

21 By: \_\_\_\_\_



22 SONAL N. MEHTA  
23 JOSHUA H. LERNER  
24 LAURA E. MILLER  
25 CATHERINE Y. KIM

ZACHARY G.F. ABRAHAMSON

26 Attorneys for Defendants  
27 Facebook, Inc., Mark Zuckerberg, Christopher Cox,  
28 Javier Olivan, Samuel Lessin, Michael Vernal, and  
Ilva Sukhar

1 **I. INTRODUCTION**

2 Facebook moves to seal the following documents:

- 3 • the redacted portions of Defendant Facebook, Inc.’s *Ex Parte* Application for an Order  
4 Shortening Time for Depositions; and  
5 • the redacted portions of Exhibits 1 and 2 to the Declaration of Zachary G.F. Abrahamson in  
6 Support of Defendant Facebook, Inc.’s *Ex Parte* Application for an Order Shortening Time  
7 for Depositions.

8 As described below, the sealed record rules do not apply to the redacted portions of these  
9 documents because the documents are “discovery motions” or “records filed or lodged in connection  
10 with discovery motions[.]” Cal. R. Ct., rule 2.550.

11 **II. ARGUMENT**

12 **A. Legal Standard.**

13 California’s Rules of Court contain rules for sealing records, but those rules expressly do not  
14 apply to “discovery motions and records filed or lodged in connection with discovery motions or  
15 proceedings.” Cal. R. Ct., rule 2.550(a)(3). Here, Facebook concurrently filed its *ex parte* application  
16 “in connection with discovery motions or proceedings”—specifically, in connection with depositions  
17 regarding Six4Three’s disclosure of Facebook’s confidential and highly confidential information.  
18 Accordingly, the sealing rules do not apply. *See Mercury Interactive Corp. v. Klein*, 158 Cal. App. 4th  
19 60, 105 (2007) (trial court erred “when it held that there was a presumption of public access to the  
20 Complaint’s exhibits, where they consisted of discovery material that was not admitted at trial or used as  
21 a basis of the court’s adjudication of a substantive matter”).

22 Where the sealing rules do not apply, courts seal records for good cause shown. *See*  
23 *Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 486 (2014) (noting that “‘good  
24 cause’ Civil Discovery Act standard applies to discovery materials not subject to sealed records rules”)  
25 (footnote omitted).

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1           **B.       The Court Should Seal These Documents.**

2           These redacted portions comprise communications about disclosures of Facebook documents  
3 between Facebook and third-party journalists. For at least two reasons, good cause exists to seal the  
4 redacted portions.

5           First, good cause exists to seal the redacted portions because those portions quote or summarize  
6 information designated confidential or highly confidential under the Stipulated Protective Order. In  
7 particular, the journalists quote confidential or highly confidential documents attached as exhibits to the  
8 May 17, 2018 Declaration of David Godkin in Opposition to the Individual Defendants' Anti-SLAPP  
9 Motion. *See* Abrahamson Decl. Supp. Facebook's *Ex Parte* App. for an Order Shortening Time, Ex. 1  
10 (April 11, 2019). These purported summaries mischaracterize and misrepresent the underlying  
11 documents, but nevertheless describe protected information from Facebook's confidential and highly  
12 confidential documents, such as internal business discussions about possible business policies and  
13 business plans. *See* Abrahamson Decl. in Supp. of Def. Facebook's Mot. to Seal ¶ 2 (submitted  
14 herewith).

15           Second, the redacted portions protect the journalists' and Facebook employees' privacy, including  
16 their identity and contact information. *See Enriquez v Airtouch Cellular*, No. BC520765, 2015 WL  
17 10014066, at \*1 (Los Angeles Cty. Super. Ct. Nov. 13, 2015) (sealing records where they contained  
18 "personally identifying information" whose disclosure would prejudice "the privacy rights of unrelated  
19 third-parties"). At this time, Facebook has no information suggesting that these journalists aided or  
20 abetted violations of this Court's orders. Accordingly, the journalists' and Facebook employees'  
21 identities are currently irrelevant and Facebook therefore requests that the Court seal the redacted  
22 portions of the documents above to protect the journalists' and Facebook employees' privacy.

23           **III.     CONCLUSION**

24           The Court should seal the redacted portions of the documents described above.

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1 Dated: April 17, 2019

DURIE TANGRI LLP



2  
3 By: \_\_\_\_\_

ZACHARY G. F. ABRAHAMSON

4 Attorneys for Defendants

5 Facebook, Inc., Mark Zuckerberg, Christopher Cox,  
6 Javier Olivan, Samuel Lessin, Michael Vernal, and  
7 Ilva Sukhar  
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**PROOF OF SERVICE**

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On April 17, 2019, I served the following documents in the manner described below:

**DEFENDANT FACEBOOK, INC.'S AMENDED NOTICE OF MOTION AND  
MOTION TO SEAL; MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from zabrahamson@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

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*Attorney for Birnbaum & Godkin, LLP*

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on April 17, 2019, at San Francisco, California.

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Zachary G. F. Abrahamson